

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JUN 29 2010

JAMES R. LARSEN, CLERK
DEPUTY
SPOKANE, WASHINGTON

Robert E. Kovacevich
Attorney for Plaintiff
818 W. Riverside Avenue, Ste. 525
Spokane, Washington 99201
Telephone: (509) 747-2104
Facsimile: (509) 625-1914

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON**

SHARON A. BRIDGE SUMNER,

Plaintiff,

v.

ANDREW S. ASDELL, Tax
Compliance Officer; MAXIMILLIAN
EDWARDS, Revenue Officer;
MARGE KENT, Revenue Officer; and
THE UNITED STATES OF
AMERICA;

Defendants.

No. CV-10-207-EFS

COMPLAINT FOR
TEMPORARY AND
PERMANENT
RESTRAINING
ORDER TO QUASH
AND PREVENT
FURTHER LEVIES
ON PLAINTIFF'S
WAGES; FOR
DAMAGES FOR
WRONGFUL
ACTIONS IN TAX
COLLECTION; AND
FOR VIOLATIONS OF
THE FAIR DEBT
COLLECTION
PRACTICES ACT,
15 U.S.C. § 1692(b)

Plaintiff alleges as follows:

Complaint - 1

Jurisdiction and Venue

1
2
3
4 1. Jurisdiction of this action is based on 26 U.S.C. §
5 7421(a); 26 U.S.C. § 7426(b)(1); 26 U.S.C. § 6304(b) & (c); 15
6 U.S.C. § 1692i,k(d); 28 U.S.C. § 2410(a); 26 U.S.C. § 7433(a); 26
7 U.S.C. § 6213(b)(2)(A) and (B); 28 U.S.C. § 1340; 28 U.S.C. §
8 1331; 28 U.S.C. § 1343(a)(3) and (4). Venue is in the Eastern
9 District of Washington.
10
11
12

PARTIES**Plaintiff**

13
14
15 2. Plaintiff Sharon A. Bridge Sumner resides at 5227
16 Sunward Drive, Spokane, Washington. She is a party Plaintiff in
17 her individual capacity. She is not the person who owes the tax
18 of her husband, as the tax accrued in years before Plaintiff was
19 married to him. She is not a taxpayer but has been levied on for
20 her husband's taxes. Her earnings have been levied upon by the
21 Internal Revenue Service for prior years income taxes owed by
22 her husband, Norman E. Sumner when Plaintiff was not married
23
24
25
26
27
28

1 to him. Plaintiff has never been assessed the tax of her husband
2 incurred in prior years or given any opportunity or notice or right
3 to contest the tax.
4

5
6 **Defendants**

7 3. Defendant Andrew S. Asdell is a Tax Compliance
8 Officer with the Small Business and Self-Employed Division of
9 the Internal Revenue Service, 550 West Fort Street, Boise, Idaho
10 83724. He issued federal income tax and penalty assessments
11 against Norman E. Sumner on December 17, 2009, for 2005. He
12 is named in his official capacity and not personally.
13
14

15 4. Defendant, Maximillian Edwards is a Revenue Officer
16 of the Internal Revenue Service, Washington District. His office
17 is located at 920 W. Riverside Avenue, Spokane, Washington,
18 99201. He is named in his official and also personal capacity as
19 he acted beyond the scope of his authority and violated the
20 Collection Due Process law, 26 U.S.C. § 6330; the fair tax
21 collection statute, 26 U.S.C. § 6304(b)(4) and the Fair Debt
22 Collection Practices Act, 15 U.S.C. § 1692b.
23
24
25
26
27

1 5. Defendant Marge Kent is a Revenue Officer of the
2
3 Internal Revenue Service at the Spokane, Washington, office
4 located at 920 W. Riverside Ave., Spokane, Washington, 99201,
5 and occupied this position at all times pertinent to this
6 complaint. Marge Kent worked in conjunction with Defendant
7 Maximillian Edwards to perpetuate a wrongful levy on Plaintiff's
8 wages. She also filed a lien and assessed taxes against Norman
9 Sumner. Defendant Marge Kent has been furnished the Affidavit
10 of Plaintiff, a draft of this Complaint and a draft of Plaintiff's
11 Memorandum of Authorities. She is named in her official and
12 personal capacity. Defendant Marge Kent is included as a
13 Defendant for all claims for relief.
14
15
16
17
18

19 6. Defendant United States of America is included as a
20 Defendant herein for all claims for relief.
21

22 **BACKGROUND FACTS**

23 7. Plaintiff married Norman E. Sumner on June 14,
24 2008. Prior to their marriage and thereafter, as verified by her
25 affidavit filed herein, the couple agreed on a separate property
26
27

28 Complaint - 4

1 agreement to keep their property, including their respective
2 earnings, as the separate property of each. They kept and
3 maintained separate bank accounts in which only the owner
4 could withdraw funds. They did not mix earnings in the
5 accounts and kept careful records of all receipts and
6 disbursements. These records and conduct were consistent
7 from the time of their marriage and throughout, including the
8 present. At all times Plaintiff and Norman E. Sumner have
9 resided in the State of Washington.

14 8. Prior to his marriage to Plaintiff, Norman E. Sumner
15 was married to Mariel Gavirati Sumner from September 9, 2001,
16 until the couple divorced on May 27, 2008. Norman E. Sumner
17 was assessed delinquent income taxes for some or all of the
18 taxable years 2001 through 2006, during the time he was
19 married to Mariel Gavirati Sumner. The assessment did not
20 mention community property rights. It was signed by Defendant
21 Andrew Asdell and also Defendant Maximillian Edwards.
22 Defendant Maximillian Edwards attempted to contact Norman
23
24
25
26
27

1 Sumner at his home but was denied entrance by Norman
2 Sumner who indicated Edwards needed a search warrant to
3 enter the home.
4

5
6 9. Norman E. Sumner's action was a peaceable exercise
7 of his constitutional safeguards. Defendant Maximillian
8 Edwards mailed appointment times and dates to Norman E.
9 Sumner who declined to appear at the times and places stated.
10 Defendants Maximillian Edwards and Marge Kent, working
11 together, on June 10, 2010, harassed, intimidated and illegally
12 and unconstitutionally levied on Plaintiff's separate salary owed
13 by her employer, ZLB Bioplasma Inc., 1201 N. Kinzie Bradley, IL
14 60915; CSL Plasma, P.O. Box 511, Kankakee, IL 60901 c/o
15 Karen Vellutini. The levy was for taxes that Plaintiff did not owe.
16 It was also on her separate property. The levy was a malicious
17 and intentional, illegal act of the two defendants who sought to
18 force Plaintiff to make her husband comply with the demands of
19 Defendants. It was also against the public policy to preserve the
20 sanctity of marriage and the fundamental and central
21
22
23
24
25
26
27

28 Complaint - 6

1 components of constitutional due process.
2

3 10. Proof of the intentional and malicious act is contained
4 in a letter dated June 18, 2010, signed by Defendant
5 Maximillian Edwards addressed to Norman E. Sumner stating,
6 "Until I receive all unfiled returns and financial information form
7 433-A, collection actions will continue." In addition to malicious
8 and intentional infliction of economic injury, the act of levying on
9 Plaintiff's separate earnings constitutes extortion. Plaintiff's
10 earnings are separate property by an agreement with Norman E.
11 Sumner and independently by Wash.Rev.Code 26.16.200. The
12 statute exempts earnings from the non-debtor spouse, from levy
13 for prenuptial tax debts. The Defendants did not give prior
14 notice to Plaintiff or consider the separate property exemption.
15 Plaintiff is the support of her two underaged daughters who live
16 with her, Elena and Anna Bridge. Plaintiff is deprived of funds
17 used to support her daughters due to Defendants malicious and
18 illegal acts. Plaintiff was also deprived of the opportunity to file
19 Innocent Spouse Relief allowed by 26 U.S.C. § 66 or 26 U.S.C. §
20
21
22
23
24
25
26
27

28 Complaint - 7

1 6013. Additionally and independently, Plaintiff was denied
2 dependent exemption deductions from the amounts levied upon.
3 Plaintiff has filed and paid all necessary federal income tax
4 returns and timely paid all federal taxes due on her income.
5 Plaintiff's representative furnished a copy of this district's
6 decision in *Venie v. U.S.*, 61 A.F.T.R.2d ¶ 88-370 (1987) issued
7 by Justin L. Quackenbush, District Court Judge, upholding
8 immunity from separate earnings. The Defendants have ignored
9 this decision.
10
11
12
13

14 11. Defendants have not given Plaintiff administrative
15 notice, administrative hearings, nor have they proceeded in any
16 legal manner whatsoever to give Plaintiff a fair hearing on the
17 issue of whether she is an innocent spouse, nor did they comply
18 with the collection due process laws. All these laws require
19 notice and opportunity to be heard.
20
21
22

23 12. Neither of the Defendant revenue officers nor any IRS
24 personnel have authority whatsoever to summarily determine
25 collection issues against a person who does not owe the tax or
26
27

1 assume the function of a court or administrative tribunal.
2
3 Plaintiff, during the periods involved here, was not a transferee,
4 nominee, or alter ego or Norman E. Sumner. Defendants have
5 no likelihood of prevailing on any levies. The actions of
6 Defendants amount to a willful and egregious violation of the
7 Fourth and Fifth Amendments of the U.S. Constitution.
8
9

10 13. If the levy is allowed to be paid over, the result will be
11 that Plaintiff will be deprived of her property without due
12 process, now and in future levies.
13

14 14. Plaintiff alleges that the harassment of the revenue
15 officers will continue and Plaintiff has no speedy or adequate
16 remedy at law to prevent continued collection efforts by the
17 Internal Revenue Service. Plaintiff's employer has immunity,
18 hence no wrongful collection action can be brought against the
19 employer.
20
21
22

23 15. The conduct of the Defendants has violated Plaintiff's
24 civil and constitutional rights.
25
26
27

FIRST CLAIM

Temporary Restraining Order

16. The Defendants wrongfully levied on Plaintiff's earnings, for taxes not owed by her but by a third party.

17. Under the circumstances, Plaintiff was egregiously and irreparably harmed by Defendants and the irreparable harm will continue unless an injunction is issued.

18. The levy will create irreparable injury to Plaintiff as she will be deprived of funds now used to support herself and her children. Further, Defendants have not commenced innocent spouse determinations or complied with collection due process safeguards required by 26 U.S.C. § 6330; 26 U.S.C. § 6901(g) or nominee, alter ego or transferee liability actions as required by law. Plaintiff is "one other than the taxpayer" and her right to her salary is superior to the government's. Therefore, the injunction is sustainable pursuant to 26 U.S.C. § 7426(a)(1) and (b)(1). All other remedies and administrative steps have been exhausted by Plaintiff. This action is also timely

1 brought within nine months of the Notice of Levy. Plaintiff is not
2
3 liable to pay the alleged assessment against her husband. The
4
5 Plaintiff's only ability to generate income at the present time is
6
7 by gainful employment. Collecting tax through continued levy
8
9 and sale of her property will irreparably injure Plaintiff.
10
11 Irreparable injury will also result in denial of exemptions. Since
12
13 the Defendants can rely on limited immunity, it is far from
14
15 certain that Plaintiff can recover all the damage from Defendants
16
17 that the levy will cause. Further, Plaintiff has insufficient funds
18
19 to pursue protracted litigation. No harm will result to the United
20
21 States as the levy is unconstitutional. Plaintiff has no plain,
22
23 speedy or adequate remedy at law and applies for equitable relief
24
25 under the circumstances. Plaintiff clearly will prevail on the
26
27 merits of this suit as the facts are obvious. Procedural due
28
process was not furnished to Plaintiff.

19. The Internal Revenue Service has wrongfully asserted
levies and also wrongfully and illegally filed levies without notice
against the salary of Plaintiff.

Complaint - 11

1 20. Wherefore, Plaintiff requests that the Court grant a
2
3 Temporary Restraining Order and Temporary Injunction until
4 this matter is tried and a permanent injunction after trial of this
5 matter.
6

7 21. Plaintiff also requests an evidentiary hearing after the
8
9 temporary restraining order is granted.

10 **SECOND CLAIM**

11 **Damages for Constitutional Violations and Violations**
12 **Under Taxpayers Rights Act**

13 22. Plaintiff has exhausted all the remedies available to
14 her. In addition, any additional administrative remedies that
15 would have been made by the Defendants are meaningless and
16 unfruitful if taken by Plaintiff. Plaintiff has attempted to mitigate
17 her damages by proposing meetings with Defendant's agents,
18 but no relief was offered to Plaintiff.
19
20
21

22 23. Plaintiff has incurred great anxiety, loss of time,
23 traveling expenses, attorney and accounting expenses and will
24 incur further loss of time and greater expense.
25
26
27

1 24. Plaintiff alleges on information and belief that further
2
3 harm will result to Plaintiff as a result of the actions by
4 Defendants and reserves the right to allege additional elements
5 of damage as they occur.
6

7 25. This action is timely as it is brought within two years
8
9 from the date that compensable damages have occurred.

10 26. The Defendant, United States of America, through its
11
12 Internal Revenue Service Revenue Agents, has recklessly,
13 carelessly, and erroneously attempted to enforce a levy and
14 collect taxes from Plaintiff through wrongful levies and seizure
15 upon other salary of Plaintiff and through other improper
16 actions, all of which occurred in Spokane County, Washington.
17
18

19 27. Defendant's agents have been provided with all
20 information necessary to ascertain the facts. Further, they had
21 access to greater sources of information than Plaintiff to
22 ascertain that the collection actions were improper. Plaintiff
23 alleges that the unlawful collection action will continue, and all
24 administrative remedies in this case have been exhausted.
25
26
27

28 Complaint - 13

1 28. During the period alleged, Plaintiff was attempting to
2
3 mitigate any damage to her and engaged an attorney to contact
4 the Internal Revenue Service to inform them that the collection
5 action was wrongful. Said agents of the Defendant were in fact
6 so informed but refused to cease collection action.
7

8
9 29. Plaintiff did not contribute to Defendant's wrongful
10 conduct in any manner whatsoever during the time this cause
11 of action accrued.
12

13 30. As a direct and proximate result of the willful
14 negligent or unconstitutional reckless actions of the Defendant's
15 agents, the Plaintiffs have suffered direct economic damages in
16 a sum yet to be ascertained but at least \$100,000. Plaintiff also
17 challenges the constitutionality of this "cap" on damages and will
18 attempt to prove a greater loss.
19
20

21
22 **DEMAND FOR A JURY TRIAL**

23 31. Pursuant to Fed.R.Civ.P 38, Plaintiff demands a jury
24 trial on all issues triable by a jury.
25
26
27

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

A. For a temporary restraining order;

B. For a temporary injunction;

C. For a permanent injunction;

D. For a ruling that the two exemptions from the IRS normally allows persons levied upon to be applied to the June 10, 2010, levy and all other levies in the future;

E. For an evidentiary hearing pursuant to a temporary restraining order;

F. For a jury trial of all the issues presented by this complaint pursuant to Fed.R.Civ.P 38(b);

G. For a total of \$100,000 for each wrongful action and other relief available to her under 26 U.S.C. § 7432, 26 U.S.C. § 7433 of the Internal Revenue Code and 15 U.S.C. § 1692 of the Fair Debt Collection Act;

H. Plaintiff further prays that the Court order all levies filed by Defendants be permanently released, vacated and not

Complaint - 15

1 refiled in the future;
2

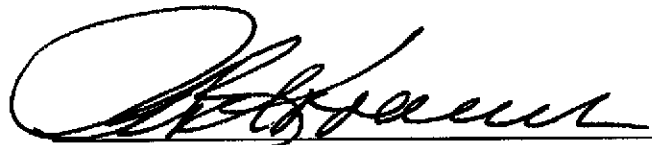
3 I. Plaintiff prays for judgment against Defendant United
4 States of America in a sum yet to be ascertained but under
5 \$100,000 unless the "cap" is unconstitutional.
6

7 J. For Plaintiff's attorney's fees as are allowable under 28
8 U.S.C. § 2412(b) and (c)(1); and 26 U.S.C. § 7430;
9

10 K. For Plaintiff's costs hereunder;

11 L. For such other and further relief as this Court deems
12 just and proper.
13

14 DATED this 29th day of June 2010.
15

16 
17

18 ROBERT E. KOVACEVICH, #2723
19 Attorney for Plaintiff
20 818 W. Riverside Avenue, Ste. 525
21 Spokane, Washington 99201
22 (509) 747-2104
23
24
25
26
27

VERIFICATION

Plaintiff, Sharon A. Bridge Sumner, certifies or declares under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, except for allegations on information and belief in which she believes are true and correct.

DATED this 29th day of June 2010.

Sharon A Bridge Sumner
SHARON A. BRIDGE SUMNER